IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24583 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DAHIBEN VITHALBHAI BHAGAT - Petitioner(s)
Versus
DIRECTOR & 1 - Respondent(s)

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Appearance :
MS BHARTI H RANA for Petitioner(s) : 1,
MS REETA CHANDARANA, AGP for Respondent(s)
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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 20/03/2006

ORAL JUDGMENT

1.In the present petition, the petitioner who is a widow of an employee of Government Primary School has challenged the action of the respondents in deducting

an amount of Rs.23,416/- from the arrears of family pension payable to the petitioner. She has, therefore, claimed refund of the said amount with interest from due date i.e. 5.10.99.

2. Short facts leading to the present petition are that the husband of the petitioner retired as Head Master from an school run by the District Panchayat, Bharuch on 30th November 1977. He was receiving pension during his life time. He expired on 20th March 1998. On account of the implementation of the recommendations of Pay Commissions with effect from 1.1.86 and 1.1.96, the pension of the husband of the petitioner was revised.

3. The petitioner upon the death of her husband was entitled to receive family pension. It is the case of the petitioner that on account of certain policy decision taken by the State Government, the pension including family pension had to be revised. The total arrears payable on 5.10.99 came to Rs.27,258/-.

4. There is no dispute about the above aspects of the matter. However, the respondents while disbursing the arrears to be paid to the petitioner deducted an amount of Rs.23,416/- and paid only a sum of Rs.3842. This adjustment was made on the ground that the husband of the petitioner was wrongly paid certain amount of

pension. The petitioner opposed to such adjustment. However, there was no response from the respondents except the communication dated 13.12.2004. The petitioner has therefore filed present petition.

5. The respondents have opposed the petition through an affidavit dated 20th March 2006 and through oral submissions made by learned AGP Mrs.Chandarana. In the affidavit in reply, it is, inter alia, contended that while giving benefit of G.R. dated 5.1.99, it came to the knowledge of the District Treasury Officer that some over-payment was made to the petitioner. The over-payment was made on account of some mistake committed by the District Primary Education Officer who had wrongly fixed the revised amount of pension of Rs.530/- instead of Rs.445/- with effect from 1.1.86. Therefore, while releasing the arrears of family pension in favour of the petitioner pursuant to the resolution dated 5.1.99, an amount of Rs.23,416/- which was the over-payment was adjusted against the arrears of pension of Rs.27,258/- payable to the petitioner and balance amount of Rs.3842/- was paid to her.

6. It can thus be seen that for some alleged defect in fixation of the pension of the husband of the petitioner way back on 1.1.86, the respondents are

seeking to adjust and recover the over-payment of pension from the arrears payable to the petitioner who is the beneficiary of family pension. The husband of the petitioner retired from the service of the Panchayat on 30th November 1977. He expired on 20th March 1998. The petitioner who is an aged widow of a retired and now expired Government servant has to face the recovery and adjustment of alleged overpayment made to the retired employee on account of some mistake allegedly committed by the authorities while fixing his pension way back in the year 1986. Admittedly, neither the petitioner nor her husband is in any way responsible for any mistake if at all committed in fixing the pension of the husband of the petitioner. Over-payment made, therefore, in the facts of the present case, would not be permissible to be adjusted. This Court and the Hon'ble Supreme Court in number of cases taken a view that when over-payment of salary and other allowance cannot be attributed to the Government servant, recovery thereof would not be justified especially after a long period of time. Considering the facts of the present case, I find it extremely inequitable and unjust to permit the Government to adjust the alleged over-payment of pension wrongly paid

to the husband of the petitioner from the arrears of pension including family pension payable to the petitioner, that too after number of years when it is found that neither the petitioner nor her husband was responsible for any such incorrect fixation of pension.

7. In the result, the petition is allowed. Adjustment of amount of Rs.23,416/- made by the respondent is quashed. The respondent shall release the said amount to the petitioner within three months of the date of receipt of this order, however, without interest. Rule is made absolute with no order as to costs.

Direct service is permitted.

(Akil Kureshi, J.)

(vjn)